WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

March 21, 1974

File No. S-720

TAXATION:
Exemptions from Mobile
Homes Privilege Tax

Honorable Donald F. Conaway
State's Attorney
Clinton County
Carlyle, Illinois 62231

Dear Mr. Conaway:

I have your letter of recent date in which you state in part as follows:

> "Your opinion is earnestly solicited as to whether or not military personnel claiming an exemption under the Soldiers and Sailors Civil Relief Act are exempt from the payment of a privilege tax on a mobile home owned by them and located in the State of Illinois, and your further opinion as to what is the privilege tax as required by Public Act 78-385. * * * "

Section 3 of "AN ACT to provide for a privilege tax on mobile homes" (P.A. 78-375), provides as follows:

> "Mobile homes in addition to such taxes as provided in the 'Use Tax Act' shall be subject to the following privilege tax only, and to no other ad valorem tax. Except as provided in Section 7, the owner of each inhabited mobile home shall pay to the county treasurer of the county in which such mobile home is located an annual tax to be computed at the rate of 15¢ per square foot. This is not a limitation on any home rule county."

Section 6 of that same Act provides in pertinent part as follows:

> "* * * The county treasurer shall distribute such taxes to the local taxing districts within the boundaries of which such mobile homes are located, in the same proportion as the property taxes collectible for each such taxing district in the prior year."

The Mobile Home Privilege Tax is a tax on the privilege of owning an inhabited mobile home. It is not an ad valorem property tax. The language in the Act, "and to no other ad valorem tax", does not, in my opinion, indicate that the legislature thought the Mobile Home Privilege Tax was an ad valorem tax, but rather refers to the use tax mentioned earlier, which is an ad valorem property tax. The difference between an ad valorem property tax and a privilege tax is explained by the Supreme Court in The People v. Deep Rock Oil Corp., 343 Ill. 388, which concerned

a tax on the use of gasoline, which is a privilege tax. The court stated at page 393-94 as follows:

> "That a tax on the use of gasoline in motor vehicles on the highways is an excise or privilege tax and not a property tax, and that the State has power to select that use, as distinguished from others, upon which to impose an excise tax has been definitely settled by the decisions of this court and courts of other jurisdictions. * * * The tax under consideration here is not unlike, in this respect, wheel tax ordinances, which impose a tax for the privilege of using vehicles on the streets. The owner of such vehicles may be required to pay an ad valorem tax thereon and may likewise be required to pay a tax upon the right or privilege of the use of them, which is an entirely different thing. While the particular use taxed is an element of property it is but one of such elements, and does not, in and of itself, constitute property. Taxation upon values, an occupation tax or license, and a tax on the privilege of using vehicles on the public streets are different subjects and do not constitute double or triple taxation because paid by one person. * * * The act imposes a tax on the privilege of operating motor vehicles upon the public highway and is not a property tax. * * * "

The purpose of this tax, as is obvious from section 6, is to require persons who own inhabited mobile homes to contribute to the cost of the services of units of local government which they, as well as persons who pay real estate taxes, enjoy.

Section 514 of the Soldiers' and Sailors' Civil Relief

Act of 1940, 56 Stat. 777, as amended, 50 U.S.C. sec. 574, provides servicemen with certain tax exemptions. It reads in pertinent part as follows:

> "(1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district. * * *
>
> (2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not

> be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, That the license, fee or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

It is apparent from this statute that servicemen only present in a State in compliance with military or naval orders (referred to as nonresident), are relieved of taxation in respect to personal property and that for purposes of taxation in respect to personal property, such personal property is not deemed to be located or present or to have a situs for taxation in this State.

The Supreme Court in California v. Buzard, 382 U.S. 386, considered the case where a serviceman, although willing to pay an $8.00 registration fee on his automobile (since he had not paid one in his home State), refused to pay an additional "license fee" calculated at "two (2) percent of the market value of the vehicle". The U. S. Supreme Court agreed with the California Supreme Court that he did not have to pay this additional license fee. It stated at page 392-394:

> "* * * It has been argued that §514(2)(b) also represents a congressional judgment that servicemen should contribute to the costs of

> highway maintenance, whether at home or where they are stationed, by paying whatever taxes the State of registration may levy for that purpose. We conclude, however, that no such purpose is revelaed in the section or its legislative history and that its intent is limited to the purpose of assuring registration. Since at least the 2% tax here involved has been held not essential to that purpose as a matter of state law, we affirm the California Supreme Court's judgment.
>
> It is plain at the outset that California may collect the 2% tax only if it is a 'license, fee, or excise' on a motor vehicle or its use. The very purpose of §514 in broadly freeing the nonresident serviceman from the obligation to pay property and income taxes was to relieve him of the burden of supporting the governments of the States where he was present solely in compliance with military orders. * * *
>
> Although the Revenue and Taxation Code expressly denominates the tax 'a license fee,' §10751, there is no persuasive evidence Congress meant state labels to be conclusive; therefore, we must decide as a matter of federal law that 'licenses, fees, or excises' means in the statute. See Storaasli v. Minnesota, 283 U. S. 57, 62. There is nothing in the legislative history to show that Congress intended a tax not essential to assure registration, such as the California 'license fee,' to fall within the category of 'licenses, fees, or excises' host States might impose if home State registration was not effected." (emphasis added.)

Even though the Mobile Home Privilege Tax imposed by Illinois is called a privilege tax and not an ad valorem tax, this State label is not conclusive in interpreting a Federal

statute. Since it is imposed in respect to personal property and is collected annually, and its revenue is used to provide for general local governmental services, it falls within the broad category of property and income taxes from which nonresident servicemen are exempt.

The two cases cited in your letter do not conflict with this view. In Snapp v. Neal, 382 U.S. 397, the U. S. Supreme Court merely held that the State of Mississippi could not impose an ad valorem property tax on mobile homes owned and occupied by nonresident servicemen.

In Sullivan v. United States, 395 U.S. 169, the U. S. Supreme Court held that a State could impose both its sales tax and use tax on servicemen. The sales tax was viewed as a tax on a single transaction and not a tax with respect to personal property. The use tax, even though strictly speaking is a tax in respect to personal property and not a tax on a transaction, was not exempted either because it was not an annually recurring tax. Some of the language used in that opinion, such as that found on page 176 to 177:

> "* * * The legislative history of the 1942 enactment and the 1944 and 1962 amendments of §514 reveals that Congress intended the Act to cover only annually recurring taxes on

> property - the familiar ad valorem personal property tax. * * * "

may be interpreted to mean that since the Illinois Privilege Tax is not an ad valorem personal property tax, the exemption does not apply. The language of this case should not be so read. The Supreme Court was distinguishing only between a one-time tax and an annually imposed tax.

Furthermore, it has always been the policy of the courts to interpret the Soldiers' and Sailors' Civil Relief Act liberally in favor of military personnel. As stated by the U. S. Supreme Court in Boone v. Lightner, 319 U.S. 561:

> "* * * The Soldiers' and Sailors' Civil Relief Act is always to be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation. * * * "

I, therefore, am of the opinion that qualifying non-resident servicemen are exempt from this tax by provisions of the Soldiers' and Sailors' Civil Relief Act.

Very truly yours,

ATTORNEY GENERAL